

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 08-50079-02
)	
Plaintiff,)	
)	
vs.)	ORDER DENYING
)	GOVERNMENT'S
)	MOTION FOR RETURN
VINE RICHARD MARSHALL,)	OF TAPES
a/k/a RICHARD VINE MARSHALL,)	
a/k/a DICK MARSHALL,)	
)	
Defendant.)	

On February 24, 2009, this court, ruling on defendant Richard Marshall's motion for disclosure and production of evidence, ordered the government to provide discovery to Mr. Marshall of certain audio tapes of recorded conversations. See Docket 179. That order gave the government a choice of either turning over its original tapes to Mr. Marshall's counsel to make copies of himself, or the government could make a set of copies for Mr. Marshall itself. Id. If the government elected to turn over the originals, the order established a time frame during which Mr. Marshall could make copies and then return the originals to the government. The order did not require Mr. Marshall to return copies if the government elected to provide a set of copies rather than the originals.

Following that order, Mr. Marshall's counsel sent a letter to government counsel "electing" to receive the original recordings from which he intended to

make digital copies. However, the court's order did not grant the election to Mr. Marshall, but rather granted the election as to how to proceed to the government. The government elected to make a set of copies itself and turn over that set of copies to Mr. Marshall.

The government then filed the instant motion seeking an order from this court requiring Mr. Marshall to return the copies it previously provided to Mr. Marshall. A hearing was held on November 12, 2009, at 9:30 a.m.

Mr. Marshall was present with his counsel Mr. Dana Hanna. The government was represented by Assistant United States Attorney Robert Mandel. At the court's request, Mr. Hanna brought the tapes he received from the government to the hearing. This court's examination of a representative sampling of the tapes reveals that all are clearly marked "COPY." Furthermore, the government confirmed orally at the hearing that it continues to maintain custody of the original audio tapes which were never turned over to Mr. Marshall.

The court's February 24, 2009, order required Mr. Marshall to return only the original tapes if the government elected to provide the originals to Mr. Marshall. That order did not contemplate or order the return of copies if the government elected to provide copies. Since the government clearly elected to provide a set of copies to Mr. Marshall, he has no obligation to return those tapes to the government until after the trial in this matter. Accordingly, the government's motion lacking in good cause, it is hereby

ORDERED that the government's motion for the return of tapes [Docket No. 502] is denied.

Dated November 12, 2009.

BY THE COURT:

/s/ Veronica L. Duffy

VERONICA L. DUFFY
UNITED STATES MAGISTRATE JUDGE